

LAWYER

(Continued from First Page)

his brainstem and made it possible for his counsel to describe him as so overpowered by psychic explosion as to make him like a sudden ship.

Reply of Mr. Delmas.

Delmas, answering the District Attorney, said: "I will beg leave to call your honor's attention to the matters the district attorney refers to as they appear in evidence. First, the witness was deposing that she had told Thaw; the district attorney said: 'This would not be allowed unless it were to show the condition of the mind of the defendant at the time the story was told. The people would not be allowed to produce any evidence to question the truth or probability of the story.'"

"And your honor ruled," continued Mr. Delmas, "that the district attorney had taken the correct position in the matter."

Mr. Delmas continued reading the evidence until he came to the point where the defense had offered the Evelyn Nesbit Thaw's story.

"And you now refuse that privilege," said Jerome.

"You are doing now what you solemnly said the law prohibited you from doing then," answered Delmas.

Jerome and Delmas Tilt.

"It is perfectly true that I cannot go into the truth or falsity of the suit of Ethel Thomas," said Jerome. "This poor girl who is now dead."

"I object to the learned district attorney saying 'This poor girl who is now dead,'" said Delmas.

"Mrs. Evelyn Nesbit Thaw herself testified that Ethel Thomas was dead," answered Jerome.

"Yes, it is in the evidence that she is dead," said the court.

"Does the district attorney assume that he can reject an offer and then after trying the case on the theory which he has since laid down, to try to avail himself of a chance which the rules of procedure will not permit?" said Mr. Delmas, referring to Jerome's offer to go to the jury on which to base an application for a lunacy commission.

"The only thing is, did or did not say the things that produced this brainstorm; did or did not hear from her for the first time the stories that alienated her love from him," answered Jerome.

"I want to show that this very story was brought to Thaw's mind two years before Evelyn Nesbit ever uttered a word of it to him."

Delmas Checks Jerome.

Mr. Delmas said: "It may be the custom on the Atlantic seaboard to interrupt arguments. It is not so in my former home."

"I beg your pardon," said Jerome; "I thought you had finished."

"I had scarcely begun," answered Delmas. He continued: "If I understand the attitude of the learned district attorney, it is this: A man who is in love with a girl makes an offer of marriage; she declines on the ground of the evil life to which she has been introduced by a bad man, and now the attempt is made to go back to the prior state of affairs to show that there were bad men in New York of whose existence Thaw knew."

During the argument, growing out of the stories of Ethel Thomas, Mr. Delmas said: "Mr. Dillingham stated to Mrs. Thaw—"

"He stopped short right here, and then added: 'Perhaps I had better not recall it. The district attorney will find it in the minutes of the trial.'"

Jerome then went through the evidence and read at length from the testimony of Mrs. Evelyn Thaw concerning the alleged beating of Ethel Thomas. It was alleged, Mrs. Thaw had said, that Thaw had beaten Mrs. Thomas after trying her to a bed post.

According to Jerome, the story had been told to Mrs. Thaw by Dillingham. Jerome read the testimony, but could find no mention of the name of Ethel Thomas in connection with the story told her by Dillingham.

"I ask that the district attorney shall not be allowed," said Mr. Delmas, "to inject into the case at the time his conclusions as statements of fact."

Delmas' Objection Sustained.

The upshot was that the objection by Delmas was sustained. The district attorney's examination was resumed.

Q—During the time you acted for Harry K. Thaw you received certain letters from this defendant?

A—Do you refer to the original letters?

Q—Any letters you examined and recognized as in the handwriting of the defendant?

Delmas objected and the question was withdrawn.

Q—Did you during the process of that action become possessed of certain letters of this defendant in connection with the action of Ethel Thomas?

Objected to on the ground that the letters must have been written prior to June, 1903.

"The defense has introduced evidence that the defendant had the letters," said Jerome. "I claim the right to go back of 1903 to show some things."

Willing to Erase Testimony.

Referring to Delmas' objection, Jerome further said:

"And your theory is all testimony relating to matters preceding June, 1903, ought to be stricken from the records."

"I have no objection," said Delmas. "That would eliminate the expert testimony and a great part of the hypothetical question," said Jerome.

"No, that would call for only the elimination of the testimony relating to the acts of this defendant," said Mr. Delmas, "prior to June, 1903. I have no objection to this being done."

By Jerome: "They put in such testimony as they saw fit. They began when he was a little child and had a relay of nurses at night. Am I to be precluded from showing that he is sane, when they are permitted to relate the facts I have referred to for the purpose of establishing his insanity?"

Ruling to Fix Dates.

Justice Fitzgerald ruled that the district attorney should fix the date before introducing the letters.

Q—I show you people's Exhibit 118 and ask you whether after looking at it you can state the inception of the period when you began to represent this defendant?

Objected by Delmas.

Q—Do you remember when you first appeared for the defendant in the case of Ethel Thomas?

Objected sustained.

Q—After October, 1904, when did you next see Mrs. Evelyn Thaw?

I don't remember.

Q—Did she come to your office shortly after?

A—I believe she came there, but I cannot fix the day.

Q—Were you in 1904 informed by her by telephone to come to the office of Abraham Hummel?

A—Not in 1904.

Delmas objected.

Jerome Made Blunder.

This question came as a surprise, as the evidence up to this time showed that Mrs. Thaw had gone to Hummel's office in 1903. It was assumed that Jerome had either mistaken the year or that he had evidence of a further visit which had not been referred to. A moment later Jerome referred to the telephone communication as subsequent to October 27, 1903.

Jerome Argues Point.

Arguing the point, Jerome said to the court:

"Your attention was directed to an affidavit. Did she not at a certain time allege that November 27, 1903, she had said in Abraham Hummel's office thus and so, all of which in contradiction of what she said she had told the defendant in Paris?"

By Delmas: "I am at a loss to understand show the questions addressed to the witness tend to show that she did not tell this story to this defendant. All that his wife testified to was that she had told her husband that she had been to Hummel's office and had there been questioned and that she was asked to sign a paper, which paper, or a reminiscence of it, was subsequently burned in her presence. And nothing that the district attorney has been asking this witness can tend to show that she did or did not tell that story. That's the point."

The question was re-read after the objection was withdrawn.

Did you receive a telephone message from her in 1904?

A—I don't remember.

A—I may have received several.

Q—Did any of them refer to the affidavit?

Delmas objected to any conversation between Mr. Longfellow and Mrs. Thaw. By the court: "Read the question again."

The question, "Did any of them relate to the affidavit?" was again read.

Jerome's Efforts Determined.

By the court: "If it is in evidence that a paper was destroyed in the office of Howe & Hummel—"

By Jerome: "We want to show that that is not true. We want to show that the paper which she testified to having burned in a jardiniere in Mr. Hummel's office was, in reality, delivered to her and by her given to Mr. Longfellow. Before I can start in and offer my secondary evidence, I must show that it is secondary. I want to show that the paper, the original, is in the possession of the defense. No power can be given to produce it. Therefore, the secondary evidence of the affidavit is material."

Jerome's statement caused a big surprise.

By Delmas: "Do you propose to establish the loss of a document by hearsay evidence?"

By the court: "The only thing in my mind is what is the use of establishing the loss at all of a paper which might not even be producible."

The question was again read.

Q—Did any of the conversations refer to the affidavit?

Allowed to answer Mr. Longfellow shook his head and said: "No."

Jerome then handed the witness the exhibit 76, and the photographic copy of the signature to the paper.

Familiar With Evelyn's Writing.

Q—You are familiar with the handwriting of Evelyn Nesbit?

Mr. Delmas took the copies of the affidavit and the reproduction and proceeded to carefully read them. It was the first opportunity Thaw's senior counsel had to examine the all-important document and he went over it at great length.

During the argument, growing out of the stories of Ethel Thomas, Mr. Delmas said: "Mr. Dillingham stated to Mrs. Thaw—"

"He stopped short right here, and then added: 'Perhaps I had better not recall it. The district attorney will find it in the minutes of the trial.'"

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